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No. 1368

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

HAROLD C. FOREMAN,
Appellant,

vs.

CITY OF BELLEFONTAINE, ET AL.
Appellees.

ON APPEAL FROM SUPREME COURT OF OHIO
MOTION TO DISMISS OR AFFIRM

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HAROLD C. FOREMAN,
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In Propria Persona

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The Court of Appeals for Logan County, Ohio moves the Court to dismiss the appeal herein from the decision of the Supreme C urt of Ohio in *State ex rel, Foreman v. Court of Appeals,* 24 Ohio St. 2d 93 (1970), or in the alternative to affirm the judgment of the Supreme Court of Ohio in that case, on the grounds that the appeal is not within the jurisdiction of this Court and that no questions of federal law are presented.

PRELIMINARY STATEMENT

In his appeal, Appellant attempts to include appeals from decisions of the Ohio Courts in two separate proceedings. One proceeding was entitled, *Foreman v. City of Bellefontaine.* This case originated in the Common Pleas Court of Logan County. In this case, Case Number

70-212, the Supreme Court of Ohio dismissed an appeal from the Court of Appeals for Logan County on September 24, 1970. In his original petition filed in this case, Appellant named the then Attorney General as amicus curiae. The Attorney General has never sought the status of amicus curiae in this case. Neither the Attorney General nor any party he is authorized to represent, is, or has ever been, a party to this suit.

The other proceeding was an action in mandamus against the Court of Appeals for Logan County, which originated in the Supreme Court of Ohio as Case No. 70-98. The Attorney General represented the Court of Appeals for Logan County in that case. The Ohio Supreme Court sustained a motion to dismiss filed by the Attorney General on behalf of the Court of Appeals, on the grounds that Appellant had failed to state a cause of action in mandamus. This motion to dismiss or affirm is directed to the appeal from this decision.

ARGUMENT

A. The Appeal is Improvidently Taken

Appellant in his Jurisdictional Statement has failed to allege grounds sufficient to confer jurisdiction upon this Court to review, by way of appeal, the decision of the Ohio Supreme Court. Appellant alleges that jurisdiction to review this decision by direct appeal is conferred by Title 28 U.S.C. Section 1257 (2). In order to confer jurisdiction on this Court under this section there must be "an explicit and timely insistence in the state courts that a state statute, as applied, is repugnant to the Federal Constitution, treaties or laws." *Charleston Federal Savings and Loan Association v. Alderson*, 324 U.S. 182-185 (1945), and cases cited therein. There was no such in-

sistence in the instant case. Appellant never raised the issue of the validity of any state statutes in the Supreme Court of Ohio. The issues presented to the Supreme Court are set forth in its opinion. Appellant asked the Supreme Court of Ohio to mandamus the Court of Appeals to state the essential elements of res judicata and where they are found in the record; to state separately its findings of fact and conclusions of law; and to file its journal entry making final the denial of an application to certify the cause as a conflict case. See 24 Ohio St. 2d at page 94; Jurisdictional Statement at B-41.

Appellant made no claim in the state court that a state statute was repugnant to any federal law. There is, therefore, no basis to sustain the jurisdiction of this Court to review the decision by way of appeal.

B. There is No Question of Federal Law for Review

If this Court considers the Jurisdictional Statement as a petition for a writ of certiorari, it should deny the petition since Appellant has also failed to allege grounds sufficient to confer jurisdiction on this Court to review the decision by way of certiorari. The issues raised by Appellant in the Ohio Supreme Court are all issues of state procedural law. Appellant failed to raise any federal question in the state court. This Court has consistently refused to decide questions which were not raised in the state court. See *Cardinale v. Louisiana* 394 U.S. 437 (1969).

CONCLUSION

Appellant has failed to allege grounds sufficient to confer jurisdiction upon this Court to review the decision of the Ohio Supreme Court. Appellant failed to allege in the state court that any state statute was invalid on the

ground that it was repugnant to any federal law. Appellant also failed to raise any question of federal law in the state court. The only issues presented to the Ohio Supreme Court were issues of state procedural law, This Court should therefore dismiss the appeal filed herein for lack of jurisdiction.

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